

Deluxe Poster Co., Inc., d/b/a Johnson Printers and Chicago Local 245, Graphic Arts International Union, AFL-CIO. Case 13-CA-16857

July 21, 1981

SUPPLEMENTAL DECISION AND ORDER

On January 21, 1981, Administrative Law Judge Donald R. Holley issued the attached Supplemental Decision in this proceeding.¹ Thereafter, the General Counsel and Respondent filed exceptions, supporting briefs, and answering briefs.

The Board has considered the record and the attached Supplemental Decision in light of the exceptions and briefs² and has decided to affirm the rulings, findings, and conclusions³ of the Administrative Law Judge and to adopt his findings as to the amount of backpay due.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Deluxe Poster Co., Inc., d/b/a Johnson Printers, Downers Grove, Illinois, its officers, agents, successors, and assigns, shall pay to each employee as net backpay the amounts set forth by the Administrative Law Judge in his Supplemental Decision.

¹ The Board's original Decision and Order in this proceeding is reported at 238 NLRB 335 (1978).

² Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

³ In the absence of exceptions, we adopt the Administrative Law Judge's conclusions that no backpay is due Dale Falesch or Robert Foy.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge: On September 22, 1978, the National Labor Relations Board issued its Decision and Order (238 NLRB 335) affirming Administrative Law Judge Lowell Goerlich's finding that the above-named Respondent had violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (herein called the Act), by refusing to sign a collective-bargaining agreement embodying terms and conditions of employment for certain of Respondent's employees which had been agreed upon by Respondent and the above-named Union on July 7, 1977, and by making midterm modifications of the July 7, 1977, contract's wage provisions without the Union's consent. The Board adopted the Administrative Law Judge's recommended Order and remedy which provide, *inter alia*:

[T]hat Respondent sign the collective-bargaining agreement reached between the Union and Respondent on July 7, 1977 . . . and give it retroac-

tive effect; that it make whole its employees for any loss of wages or other employee benefits they may have suffered as a result of Respondent's failure to sign the contract. The loss of earnings together with interest under this Order shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), *Florida Steel Corporation*, 231 NLRB 651 (1977), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

In respect to the across-the-board increase of 2 percent . . . it may be deducted from any backpay owing the employees. However, the merit increases granted since July 7, 1977, may not be deducted from backpay due in that Respondent did not establish by credible evidence that Respondent, according to its alleged past practice, would not have granted such wage increase even if the contractual 7-percent wage increase had been implemented.

Administrative Law Judge Goerlich's Decision was dated June 12, 1978.

Subsequent to the issuance of the Board's Decision and Order, Respondent filed a petition for review and the Board filed its cross-application for enforcement in the United States Court of Appeals for the Seventh Circuit. By Order dated May 23, 1979,¹ the Seventh Circuit denied Respondent's petition for review and enforced the Board's Order in full. The court specifically found, *inter alia*, that "[T]he Board acted well within its discretion in deciding that merit increases should not be deducted from the Company's back pay liability."

On November 28, 1979, the Regional Director for Region 13, on behalf of the Board and pursuant to Section 102.52, *et seq.*, of the Board's Rules and Regulations, Series 8, as amended, issued a backpay specification and notice of hearing setting forth therein the computation of gross backpay and net backpay allegedly due to Charles Adams, John Alexander, Mario Casolaro, Paul Cooney, Dale Falesch, Robert Foy, Robert Halderson, Robert Hall, Alan J. Kubik, John Liebmann, Robert Schleper, Ruth Ann Schmidt, Kenneth Spencer, Jeffrey Thomas, Steve Trela, and Thomas Zack, all allegedly bargaining unit employees covered by the July 7, 1977, collective-bargaining agreement. An answer to the backpay specification was filed by Respondent on December 12, 1979. Thereafter, on April 23, 1980, the Regional Director for Region 13 issued an amended backpay specification and notice of hearing,² and Respondent filed an answer to same on April 29, 1980, at the hearing held herein.

Pursuant to notice the supplemental hearing was held before me in Chicago, Illinois, on April 28, 29, and 30, 1980.³

Upon the entire record in this case, including observation of the witnesses and their demeanor while testifying, and after careful consideration of the post-hearing briefs, I make the following:

¹ The Order was unpublished.

² No claim for backpay is made in the amended backpay specification for employees Mario Casolaro and Jeffrey Thomas.

³ The General Counsel's motion to correct the record filed with her brief is granted.

FINDINGS AND CONCLUSIONS

I. PRELIMINARY OBSERVATIONS

Before the Union became the exclusive collective-bargaining agent of all of Respondent's employees engaged in lithographic work,⁴ employee performance was reviewed periodically and raises were based upon merit. Such reviews were conducted every 6 months, normally in June or July and December or January.

During the summer of 1977, Respondent did not review the performance of the bargaining unit employees herein involved as it was negotiating with the Union. However, by letter dated August 30, 1977,⁵ Respondent's counsel informed Union Representative Roy Andren that Respondent would not execute the collective-bargaining agreement which had been agreed upon on July 7, 1977, and he stated, *inter alia*:

May I propose that you support our willingness to give all employees in the plant, who have not received a pay increase, including those in your unit a flat two percent pay raise plus a possible additional raise to each individual based upon the Company's determination as to the employee's performance.

The Union rejected the above-described Respondent proposal, and, as revealed in the Board's September 22, 1978, Decision and Order, Respondent gave bargaining unit employees a 2-percent across-the-board increase effective October 3, 1977. Thereafter, prior to the commencement of the hearing in the underlying unfair labor practice case on February 15, 1978, it awarded merit pay increases to bargaining unit employees. As indicated, *supra*, the Board, with court approval, has found that Respondent cannot deduct merit increases given by Respondent to bargaining unit employees during the period July 7, 1977, until the commencement of the unfair labor practice hearing, from backpay due to bargaining unit employees.

The instant backpay specification alleges, and Respondent admits, that the July 7, 1977, collective-bargaining agreement provided for the following raises for bargaining unit employees during the period July 7, 1977, to expiration of the contract on July 6, 1979:⁶

7% increase effective July 7, 1977
7% increase effective July 7, 1978
16¢ per hour cost-of-living increase effective January 21, 1978
40¢ per hour cost-of-living increase effective July 30, 1978

⁴ The term "Lithographic Production Work" is defined in the collective-bargaining agreement as being "all work, processes and operations directly related to lithography, or offset printing (dry or wet methods)" and also includes "any technological change, evolution or substitution for any work, process or operation now or hereinafter utilized for any of the work described above." The collective-bargaining agreement further states that "the term 'Lithographic Production Work' excludes work which is only incidental or indirectly related to Lithographic Work."

⁵ See Jt. Exh. 3.

⁶ See G.C. Exh. 1(g), par. III(b) and (c) (amended backpay specification and notice of hearing), and G.C. Exh. 1(k), par. III(b) and (c) (answer to amended backpay specification).

36¢ per hour cost-of-living increase effective January 28, 1979

The record in this proceeding reveals that Respondent did not give its bargaining unit employees the above-described raises contemplated by the contract. It continued, however, after participating in the February 1978 unfair labor practice hearing, to award pay increases to unit employees. Thus, Respondent does not dispute in this proceeding the fact that it must now retroactively give unit employees the contractual increases described above. It does claim, however, that increases given to unit employees after the close of the unfair labor practice hearing were cost-of-living increases as opposed to merit increases, and it claims that wage increases awarded subsequent to the unfair labor practice hearing should be credited as an offset against net backpay due. Additionally, it claims that two employees named in the backpay specification, Ruth Ann Schmidt and Dale Falesch, are not bargaining unit employees and it claims that employee Robert Foy, an admitted bargaining unit employee who started work on January 29, 1979, is not entitled to the 36-cent cost-of-living increase which became effective on January 28, 1979. The delineated issues are discussed below:

II. PAY RAISES GIVEN TO UNIT EMPLOYEES SUBSEQUENT TO THE UNFAIR LABOR PRACTICE HEARING⁷

The record reveals that the following employees, who the General Counsel claims were members of the bargaining unit, received pay increases during the backpay period subsequent to the conduct of the hearing in the underlying unfair labor practice case:⁸

Employee	Old-New Hourly Rate	Effective for Payroll Period Ending	Per- centage
Ruth Ann Schmidt	5.60 to 5.85	7/29/78	4.4
	5.85 to 6.20	12/16/78	5.9
Robert Fox	5.50 to 6.00	3/10/79	4.3
Robert Halderson	6.95 to 7.15	7/15/78	2.7
	7.15 to 7.50	12/16/78	4.3
Robert Hall	6.25 to 6.50	7/15/78	4.0
Charles Adams	6.70 to 7.00	7/8/78	4.4
	7.00 to 7.30	12/16/78	4.2
Alan J. Kubik	7.15 to 7.35	7/15/78	2.7
	7.35 to 7.75	12/16/78	5.4
John Liebmann	6.20 to 6.50	7/15/78	4.8
	6.50 to 6.90	12/16/78	6.1
Robert Schleper	5.00 to 5.50	7/15/78	4.8
	5.50 to 5.80	12/23/78	6.1
Kenneth Spencer	6.40 to 6.65	7/15/78	4.0
Steve Trela	5.90 to 6.20	7/15/78	5.0

⁷ While Respondent claims the Board and the Seventh Circuit erroneously refused to permit it to offset pay increases given to unit employees during the period July 7, 1977, to February 15, 1978, from backpay due such employees, the doctrine of *res judicata* precludes me from permitting relitigation of the claim. *McLoughlin Manufacturing Corporation, et al.*, 219 NLRB 920, 923 (1975).

⁸ See Resp. Exhs. 2 and 5(a) through (m).

Employee	Old-New Hourly Rate	Effective for Payroll Period Ending	Per- centage
Thomas Zack	6.20 to 6.60	12/23/78	6.4
	6.70 to 7.00	7/15/78	4.4
	7.00 to 7.40	12/16/78	5.7
Paul Cooney	6.95 to 7.25	7/15/78	4.3
	7.25 to 7.65	12/16/78	5.5
John Alexander	7.05 to 7.25	7/15/78	2.8
	7.25 to 7.65	12/9/78	5.5
Dale Falesch	3.00 to 3.25	3/3/79	8.3
	3.25 to 3.50	9/8/79	7.8

Respondent's president, Ross Johnson, testified he informed Wayne Miller, supervisor of the offset press department, and Harry Chlebos, supervisor of the camera department, in January 1978 that they were to review the performance of employees working under their supervision and thereafter give them a raise. Johnson explained that Respondent reviews its employees every 6 months and, when and if an increase is given, it is based on cost of living, merit, and how the Company is doing financially. He indicated the practice is outlined in an employee handbook placed in the record as General Counsel's Exhibit 5. Johnson claims he specifically informed Miller and Chlebos in January 1978, July 1978, and December 1978, before raises were given, that they would be cost-of-living increases.⁹

Limited testimony concerning raises given during the period under discussion was elicited from employees who testified at the hearing. Thus, part-time employee Dale Falesch, whose status is discussed, *infra*, testified he was told when he was hired that he would get an initial raise if he worked out and would then receive a raise every 6 months when everybody got raises. Ruth Schmidt testified on rebuttal that she was not told that raises she received after October 1977 were cost-of-living raises. Similarly, Alan Kubik testified that Supervisor Miller evaluated his performance in July 1978 and then informed him he would receive a raise, but that Miller did not categorize the raise as a cost-of-living increase, a merit increase, or indicate that general profitability of the Company or cost of living were factors considered in the decision to grant him an increase. Finally, John Tateman testified he received three raises after October 1977. On each occasion, he claims Supervisor Miller discussed his strengths and weaknesses with him and informed him the raises were general raises that were given out every 6 months. Tateman denied that Miller said anything about cost of living during the wage increase discussions.

The General Counsel claims in her brief that Respondent failed to affirmatively plead that it is entitled to deduct cost-of-living increases given to employees during the backpay period from gross backpay admittedly due to each unit employee. Technically, she is correct because Respondent failed to plead that it had given cost-

of-living increases to employees during the backpay period. I note, however, that its answers to the original and the amended backpay specifications set forth actual earnings figures for employees which differ from those contained in the backpay specifications. Additionally, its counsel indicated at the outset of the instant proceeding that it was claiming that pay increases given to bargaining unit employees in July and December 1978 should be included in actual earnings of employees. In the circumstances, as the issue was fully litigated at the hearing, I conclude Respondent's claim should be considered.

Respondent in this case admits, in effect, that, with the exception of the October 1977 across-the-board 2-percent increase given to bargaining unit employees, it has followed the practice of reviewing employees' performance once every 6 months and thereafter awarding pay increases to employees. As revealed above, the pay increases given to various employees in July and December 1978 were varied in amount. Although Respondent's President Johnson claims the pay increases were cost-of-living increases and he claims he told Supervisors Miller and Chlebos they would be cost-of-living increases, I fail to see any correlation between the size of the various increases conferred and the increase in the cost-of-living index placed in the record as Joint Exhibit 1. Indeed, Respondent has not argued that raises in given amounts were awarded because the cost-of-living index had risen by a stated amount during any given period. In the circumstances, I find that Respondent has failed to prove that the wage increases given to the above-named employees in July and December 1978 were cost-of-living increases. To the contrary, as the increases in question were given more or less at 6-month intervals after review of employee performance pursuant to Respondent's past practice, I find that they were merit increases.

While it is quite possible that Respondent would not have awarded its employees merit increases during the period July 7, 1977, to July 6, 1979, had it abided by the terms of the July 7, 1977, collective-bargaining agreements, it has failed during this supplemental hearing to prove that it would not have followed its past practice if it had given the raises provided for in the agreement. Accordingly, I find, for the reasons given, that raises given employees in July and December 1978 cannot be offset against backpay due bargaining unit employees.

III. THE STATUS OF DALE FALESCH

In October 1978, Dale Falesch was a junior in high school. At the beginning of the 1978-79 school year, he elected to participate in a cooperative education program under which he would be excused from classroom studies a portion of each day to enable him to gain vocational training while working for a commercial employer. At the request of one of the high school instructors, Johnson, acting for Respondent, agreed to participate in the program by permitting Falesch to work at Respondent's place of business. A certificate evidencing the agreement was placed in evidence as Respondent's Exhibit 1. Under the program, Falesch was to receive one credit for attending class pursuant to the co-op plan and one credit for working during a portion of his school day.

⁹ Supervisors Miller and Chlebos were not called as witnesses to corroborate Johnson's assertion. Johnson claims he was advised to categorize the January, July, and December 1978 raises as cost-of-living raises by his legal counsel.

While the July 7, 1977, collective-bargaining agreement provided a minimum starting rate of \$4.50 per hour for unit employees, Falesch was hired at \$2.65 per hour. Johnson testified he informed Falesch at the time of hire that he would work throughout the facility as needed. In point of fact, however, Falesch worked primarily in the camera department from October 1978 forward, performing the same work performed by full-time employees who are admittedly bargaining unit employees.

As a part-time employee, Falesch worked an average of 17-20 hours per week. He was expected to report for work when he completed his classroom work each day and normally worked from 1 p.m. to 4:30 or 5 p.m. He, like other part-time employees, received no fringe benefits other than a discount on purchases and eligibility for participation in several company-sponsored sporting activities.

While nothing was said concerning his expected tenure of employment when he was hired, he continued to work at Respondent subsequent to the end of his 1978-79 school year. From early June 1979 until July 6, 1979, the end of the contract term, Falesch was not participating in the co-op program.

Review of Board case law reveals that part-time students are appropriately included in bargaining units with regular employees if they have sufficient community of interest with such employees and they are excluded if they do not enjoy sufficient community of interests with regular employees. General guidance is supplied by *St. Clare's Hospital and Health Center*, 229 NLRB 1000 (1977), where the Board stated (at 1000-02):

[T]he Board has concluded that where a student is employed by a commercial employer in a capacity related to the student's course of study the student will be excluded from a unit of full-time nonstudent employees.

Examples of situations in which such employees were excluded from the bargaining unit are *Pawating Hospital Association*, 222 NLRB 672 (1976); *Highview, Incorporated*, 223 NLRB 646 (1976); and *Frank B. Amundson, et al., d/b/a Fenco Machine Company*, 238 NLRB 816 (1978). In *Pawating Hospital Association*, *supra*, the Board decided to exclude some 40 part-time students, about half of whom had been hired pursuant to a co-op program, stating (at 673):

These students, who are primarily concerned with their high school studies, are paid lower wages than the Employer's other employees including regular part-time employees, work different hours, and receive no fringe benefits. Therefore we conclude that the part-time students lack a community of interest with regular employees.

In *Highview, Incorporated*, *supra*, the students were hired as part-time employees pursuant to a cooperative education program but they received no scholastic credit for working. Accentuating the fact that the students could not expect full-time employment upon graduation, the Board excluded them from the bargaining unit. In *Frank B. Amundson*, *supra*, a part-time student who was work-

ing pursuant to a co-op program was excluded from the unit because it was concluded that he was employed in a capacity related to his course of study.

In the instant situation, I am persuaded that Falesch does not possess sufficient community of interest with regular employees to justify including him in the unit by the following: He was hired pursuant to a co-op program, spent part of his school day on the job, and received scholastic credit for working; he was hired at \$2.65 per hour, while regular bargaining unit employees received \$5 or more per hour; he worked hours which differed from those of regular employees; and the record fails to reveal that he can expect full-time employment upon graduation from high school.¹⁰

Having concluded that Dale Falesch is not a bargaining unit employee, I find he is entitled to no backpay.

IV. THE STATUS OF RUTH ANN SCHMIDT

While the record does not reveal the complete nature and extent of Respondent's printing operation, it does reveal that Respondent has departmentalized its printing operation by creating a sales force, an art department, a camera department, an offset press department, a bindery department, a shipping department, and a PDQ department.¹¹ Ruth Ann Schmidt worked in the PDQ department during the backpay period.

Ross Johnson described the PDQ department as a little print shop which produces offset printing for customers while they wait. Two persons work in the department, i.e., a receptionist who greets customers and takes their orders, and Schmidt, who operates a machine which photographs the item(s) to be printed and thereafter produces an offset print of the item(s) desired.¹² In addition to the duplicating-offset press machine, Schmidt's area is equipped with a folder, a cutter, a collator, and a lay table. Thus, she is able to accomplish all the necessary work required on many orders without the assistance of others. She did indicate during her testimony, however, that approximately 85 percent of her product is collated by the bindery department.

The General Counsel contends that Schmidt should be included in the bargaining unit, primarily because she operates a machine which produces a copy by the offset printing method. Respondent, who included Schmidt's name on the *Excelsior* list furnished to the Union prior to the election held in 1976, claims Schmidt is the manager of the PDQ department and that she does not share suffi-

¹⁰ *W & W Tool & Die Manufacturing Co.*, 225 NLRB 1000 (1976); *Gruber's Super Market, Inc.*, 201 NLRB 612 (1973); *Display Sign Service, Inc.*, 180 NLRB 49 (1969); and *Parkwood IGA Foodliner*, 210 NLRB 349 (1974), cited by the General Counsel, are distinguishable. Thus, the part-time students involved in *Gruber's Super Market* and *Display Sign* were not employed pursuant to a co-op program and the record in *W & W Tool & Die Mfg. Co.*, *supra*, revealed that about half of the employer's full-time employees were originally employed in connection with a work experience program. Finally, the students involved in *Parkwood IGA Foodliner*, *supra*, enrolled in an educational program after they had been hired by the employer.

¹¹ Schmidt explained that "PDQ" means "printing done quickly."

¹² The machine is called an addressograph multigraph 2850. It photographs copy, fuses an image onto a paper master plate through an electrostatic process, and automatically places the paper master plate into the portion of the machine which produces an offset printed copy.

cient community of interest with camera department and offset press department employees to be included in the unit.

At the time of the 1976 election, Schmidt was the receptionist in the PDQ department and one Frank Juricka performed the work now performed by Schmidt. The Union challenged the ballots cast by both Schmidt and Juricka.¹³ At the outset of bargaining negotiations between Respondent and the Union, Roy Andren, the Union's spokesman, indicated the Union desired to represent only the employees working in the camera department and the pressroom department. He specifically indicated the Union did not desire to bargain for the persons working in the PDQ department.

Patently, Schmidt should be included in the bargaining unit if she shares sufficient community of interest with camera department and offset press department employees and she should be excluded if the requisite degree of community of interest with such employee has not been shown. For the reasons set forth below, I conclude she should not be included in the bargaining unit.

The record reveals that the PDQ department is a small area which is located in a building which is adjacent to and connected with a separate building which houses the camera department and the offset press department. Customers visit the PDQ department, but do not visit the camera department or the offset press department because Respondent's salesmen, who work in the building housing the PDQ department, take orders which are to be filled through Respondent's regular lithographic process. Describing her normal workday, Schmidt testified that she clocks in and out at the same timeclock used by admitted unit employees and she passes through the offset press department four or five times a day when she comes and goes from work, goes to the shipping area, takes work to the bindery area, or uses a soft drink machine or scrub sink located in the offset press department. She performs no work in the offset press department, but on several occasions offset pressmen have performed her job in her absence. On such occasions, she has informed such individuals how to operate her machine which is more automated than the offset presses operated by persons in the offset pressroom. While Schmidt spends 6-7 hours per day operating her machine, she relieves the receptionist during lunch and other breaks and when she takes customer orders, she prepares the customer's bill and collects the amount due if the sale is a cash sale.¹⁴ Periodically, Schmidt balances the cash box used in the PDQ department, takes inventory of supplies she uses, and orders supplies.

In sum, the record reveals that Schmidt's work places her in close frequent contact with the PDQ receptionist, employees in the bindery department, and she occasionally takes material to the shipping department for shipment. While she receives the same fringe benefits received by bargaining unit employees, is hourly paid at a rate only slightly less than most camera department and offset press department employees, and works the same

hours, her contact with bargaining unit employees is minimal. All considered, I conclude that her interests are most closely aligned with the interests of nonbargaining unit employees than with bargaining unit employees. Accordingly, I find she should not be included in the bargaining unit and that no backpay is due her.

V. STATUS OF ROBERT FOY

Robert Foy, an admitted bargaining unit employee, began working for Respondent on January 29, 1979. He did not appear as a witness and the record fails to reveal when he was hired. His starting rate was \$5.50 per hour. The General Counsel contends that Foy is entitled to receive the third contractual cost-of-living increase, which was the last contractual increase during the backpay period. If he received the 36 cents per hour received by other unit employees during the payroll period ending February 3, 1979, his starting rate would be \$5.86 rather than \$5.50. Respondent contends Foy was not employed at the beginning of the pay period which ended on February 3, 1979, and that the General Counsel is estopped by its own backpay specification from claiming that Foy is entitled to the third cost-of-living increase provided for in the collective-bargaining agreement.

The collective-bargaining contract between Respondent and the Union provides that adjustments in pay necessitated by defined increases or decreases in the Consumer Price Index become effective "... the first full payroll week following official publication of that Index ...".¹⁵ With regard to the third cost-of-living increase under discussion, the amended backpay specification alleges, and Respondent's answer admits, that the increase was "effective January 28, 1979, i.e., payroll period ending February 3, 1979."¹⁶ It is undisputed that Foy was entitled to the increase in question if he was employed before it became effective or on the day it became effective. I conclude he did not meet either requirement.

The record reveals Foy started to work at Respondent on January 29, 1979, a Monday. Since the General Counsel indicated in the amended backpay specification that the third cost-of-living increase became effective the day before Foy was hired—January 28, 1979—I have difficulty understanding the General Counsel's claim that he was entitled to the increase as the pleadings appear to lead to a contrary conclusion. However, counsel for the General Counsel states in her brief:

The Amended Specification refers to the increase as being "effective January 28, 1979, i.e. payroll period ending February 3, 1979" (G.C. Exh. 1(g).) It is clear that the January 28th date refers to the end of the incomplete payroll period following publication of the Index, a date that is therefore irrelevant to the contractually established effective date for the adjustment.

Apparently, her contention is that Respondent's payroll period begins on Monday and ends on Friday. I find no

¹³ Challenged ballots were not determinative of the results of the election and consequently they were not resolved.

¹⁴ Other unit employees do not prepare orders, bills, or collect moneys from customers.

¹⁵ See ALJ Exh. 1, p. 2.

¹⁶ See G.C. Exh. 1(g), par. III(c)(3).

support for such a contention in the record. To the contrary, if the workweek ended on February 3, 1979, a Friday, I assume the next workweek began at 12:01 a.m. on Saturday, February 4, 1979.¹⁷ Thus, without evidence which would reveal to the contrary, I conclude that Respondent's normal workweek extended from Saturday at 12:01 a.m. until the following Friday at 12 midnight. If such be the case, the workweek ending February 3, 1979, began at 12:01 a.m. on Saturday, January 27, 1979. Foy was not employed until 2 days after the workweek began, so he was hired after the cost-of-living increase became effective. I find he is not entitled to the increase and/or any backpay.

VI. STATUS OF THE UNSIGNED COLLECTIVE-BARGAINING AGREEMENT

Prior to the commencement of the instant proceeding, Respondent executed the collective-bargaining agreement placed in the record as ALJ Exhibit 1. The agreement was executed subsequent to its stated expiration date of July 6, 1979. For some reason not disclosed by the record, the Union has never signed the agreement. Respondent contends it cannot lawfully be compelled to retroactively comply with the terms and conditions of the contract because the Union has not signed it. I find the contention to be without merit.¹⁸

As observed by counsel for the General Counsel in her brief, it is well established that the Board is not bound by the technical rules of contract law. *Lozano Enterprises v. N.L.R.B.*, 327 F.2d 814 (9th Cir. 1964); *Haberman Con-*

struction Company, 236 NLRB 79, 85 (1978). Thus, when the parties have been found to have agreed to the substantial terms and conditions of a contract, they can be held to the terms of the contract even though it has not been reduced to writing. *H. J. Heinz Co. v. N.L.R.B.*, 311 U.S. 514, 524-526 (1941); *N.L.R.B. v. New York-Keansburg-Long Branch Bus Co., Inc.*, 578 F.2d 472, 477 (3d Cir. 1978). It logically follows, and I find, that in the instant situation, the Board could lawfully require that Respondent remedy the unfair labor practices found to have been committed without regard to whether either Respondent or the Union had signed the writing embodying the terms and conditions of employment agreed to on July 7, 1977. For the reasons stated, I find the Union's failure to sign the contract in question is without legal significance.

VII. THE AMOUNT OF BACKPAY DUE

Having resolved the various issues litigated before me as indicated above, I find the following sums are due to the following individuals, with interest as prescribed in the Board's Decision and Order dated September 22, 1978:

Charles Adams	\$3,785.54
John Alexander	4,880.17
Paul Cooney	4,709.17
Robert Halderson	3,973.71
Robert Hall	446.65
Alan J. Kubik	5,440.09
John Liebmann	2,718.21
Robert Schleper	2,500.69
Kenneth Spencer	618.08
Steve Trela	4,386.99
Thomas Zack	2,473.18

¹⁷ This assumption is bolstered by the fact that the payroll records placed in the record as Resp. Exhs. 5(a) through (m) reveal that the employees worked varying amounts of overtime. The record reveals overtime work was occasionally performed on Saturday.

¹⁸ A motion to dismiss the backpay specification because the Union had not signed the contract was made by Respondent and denied by me at the hearing.